federal register

Tuesday
May 13, 1980

Part VII

Department of Agriculture

Food Safety and Quality Service

Fresh Irish Potatoes—Livestock Feed and Starch Manufacture Diversion Program

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2880

Fresh Irish Potatoes—Livestock Feed and Starch Manufacture Diversion Program

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: Heavy supplies of potatoes in Maine have resulted in depressed prices to potato growers. Action must be taken to remove part of the surplus available to the fresh market to enhance returns from the sale of the remainder of the crop. Accordingly, payments are being offered producers in Maine to encourage the diversion of such potatoes for use as livestock feed and in starch manufacture. These payments will compensate those producers for the lower price obtained from the sales of potatoes to these uses.

The purpose of this rule is to set forth the terms and conditions of a potato diversion program for 1979-crop Maine potatoes. This rule sets out the provisions of eligibility for payments, the need for approval of diversion by USDA, the rate of payment to producers, and other conditions of participation. This rule is necessary to inform eligible producers of program requirements.

EFFECTIVE DATE: May 13, 1980 to be terminated no later than June 27, 1980.

FOR FURTHER INFORMATION CONTACT: D. A. Thibeault, Chief, Commodity Procurement Branch, Fruit and Vegetable Quality Division, FSQS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447-2781.

The Final Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

Background

Heavy supplies of potatoes in Maine have resulted in depressed prices to potato growers. Action must be taken to remove part of the surplus available to the fresh market to enhance returns from the sale of the remainder of the crop. Accordingly, payments are being offered producers in Maine to encourage the diversion of such potatoes for use as livestock feed and in starch manufacture. These payments will compensate those producers for the lower prices obtained from the sales of potatoes to these uses.

The program will be offered in one period of 45 days duration.

Immediate action is necessary to avoid the price-depressing impact which sales of these supplies of potatoes are having on the market value of potatoes. Accordingly, Donald L. Houston, Adminstrator, FSQS, has determined that this document represents an emergency situation requiring immediate program action without a notice and comment period, that compliance with the notice and public procedure provisions of U.S.C. 553 is impracticable and contrary to the public interest, and in accordance with the provisions of Executive Order 12044 (43 FR 12661, March 24, 1978), that it is not possible to publish these regulations in proposed form and allow 60 days for public comment. Therefore, these regulations shall become effective upon publication in the **Federal Register.**

Accordingly, 7 CFR Chapter XXVIII, Part 2880, Subpart—Fresh Irish Potatoes—Livestock Diversion Program, is revised in its entirety to read as follows:

PART 2880—FRESH IRISH POTATOES

Subpart—Fresh Irish Potatoes—Livestock Feed and Starch Diversion Program

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Authority: Sec. 32, 49 Stat. 774, as amended, (7 U.S.C. 612c).

Subpart—Fresh Irish Potatoes—Livestock Feed and Starch Diversion Program

§ 2880.1 General statement.

In order to encourage the domestic consumption of fresh Irish potatoes by diverting them from normal channels of trade and commerce, the Secretary of Agriculture, pursuant to the authority conferred by section 32 of Pub. L. 320, 74th Congress, as amended, offers to make payment for the diversion for use as livestock feed and for starch manufacture of 1979-crop potatoes produced and stored in Maine, subject to the terms and conditions set forth in this subpart. Information relating to this program and forms prescribed for use hereunder may be obtained from the following:

Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture, Washington, D.C. 20250.

State of Maine Agricultural Stabilization and Conservation Committee.

Maine County Agricultural Stabilization and Conservation Committees.

§ 2880.2 Administration.

The program provided for in this subpart will be administered under the general direction and supervision of the Director, Fruit and Vegetable Quality Division, Food Safety and Quality Service, and in the field will be carried out by the Agricultural Stabilization and Conservation Service through the Maine Agricultural Stabilization and Conservation State Committee and the Aroostook County Agricultural Stabilization and Conservation County Committee, hereinafter referred to as the State and County Committees. The State Committee will authorize one or more employees to act as representatives of the United States Department of Agriculture, hereinafter referred to as USDA, to approve applications for participation. The State and County Committees or their authorized representatives do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements to this subpart.

§ 2880.3 Area.

This program will be effective in the State of Maine.

§ 2880.4 Period of program.

This program will be effective from May 13, 1980 and continue for 45 days.

§ 2880.5 Rate of payment.

The rate of payment per 100 pounds of potatoes which meet the requirements of Specification A as defined in § 2880.11 and which are diverted as prescribed in

§ 2880.10 will be two dollars and 25 cents per hundredweight from the effective date of the program through a period of 45 days. No payment will be made for any fractional part of 100 pounds and such quantities shall be disregarded.

§ 2880.6 Eligibility for payment.

Payments will be made under this program to any producer of 1979-crop Maine potatoes stored in Maine, (a) who enters into a marketing agreement with the State of Maine for the marketing of the producer's 1979-crop potatoes, (b) who executes and files an application for participation on the prescribed form, (c) who files a performance bound as provided in § 2880.8, (d) whose application is approved, (e) who diverts fresh Irish potatoes produced and stored within the State of Maine, (f) who files claim as provided in § 2880.14, and (g) who complies with all other terms and conditions contained in this subpart. The Administrator, FSQS may prescribe and publish further conditions of eligibility when deemed desirable to assure that growers are the primary recipients of program benefits.

§ 2880.7 Application and approval for participation.

Producers desiring to participate in this program must have voluntarily signed the marketing agreement relative to the marketing of 1979-crop potatoes prepared by the Commissioner of Agriculture, State of Maine, and approved by the Food Safety and Quality Service of USDA. Producers must submit a copy of such signed agreement and a written application on Form ASCS–117 "Application for Participation in Fresh Irish Potato Livestock Feed Diversion Program". Each applicant must submit a performance bond as provided in § 2880.8. Applications and bonds should be submitted to any Maine County ASCS Office. Applications will be considered in the order received and in accordance with the availability of funds. Applicants will be notified of the approval or nonapproval of their application. Approved applications may be modified or amended with the consent of the applicant and the duly authorized representative of the State Committee: *Provided,* That such modification or amendment shall not be in conflict with the provisions of this subpart or any amendment or supplements hereto. An approved applicant is hereinafter referred to as "the producer".

§ 2880.8 Performance bond.

In order to protect the Government's interest, each producer shall submit with his first application for participation a performance bond as further assurance that the potatoes diverted pursuant to this program will be used exclusively for feeding to livestock or for starch manufacture by methods prescribed in § 2880.13. The bond shall be executed on Form ASCS–119, "Performance Bond", by the principal and two individual sureties, all of whom shall agree to indemnify USDA for any losses, claims, or payments made by USDA with respect to any quantity of such potatoes not used for livestock feed or starch manufacture. USDA may disapprove any bond if for any reason any surety does not in the opinion of USDA afford USDA full protection and security.

§ 2880.9 Period of diversion.

The potatoes in connection with which payments are to be made must be diverted (a) after the date of approval of the producer's application, (b) within the time period specified in the approved application, and (c) in any event on or before the termination date of the program.

§ 2880.10 Definition of diversion.

Diversion of potatoes for use as livestock feed or starch manufacture as used herein means the initial processing of potatoes for feeding to livestock or for starch manufacture by cutting, chopping, slicing, gouging, crushing, ensiling, or cooking to the degree that the general appearance of the lot as a whole has been damaged to such an extent that, in the opinion of the FSQS inspector, the potatoes are readily and obviously identifiable as having been initially processed and rendered unsuitable to enter into normal channels of trade and commerce as potatoes.

§ 2880.11 Diversion specifications.

Potatoes in connection with which payments will be made must meet the requirements of "Specification A", which is hereby defined as meaning "Field Run" or "Cellar Run" potatoes which are equal to or better than the quality requirements of the Maine Processing Grade, specified in circular 46, promulgated by the Maine Commissioner of Agriculture, dated November 1, 1971. For those potatoes which fail to meet the requirements of the Maine Processing Grade, payments will be based on the percentage of the potatoes meeting the grade requirements. Notwithstanding the above, after consultation with industry representatives, the Director of the Fruit and Vegetable Quality Division may exclude from meeting the requirements of Specification A any additional grades and sizes which otherwise would meet the requirements of Specification A. Any such exclusion will be set forth in the application form for diversion authorization in the particular area to which it is applicable.

§ 2880.12 Inspection and certificate of diversion.

Prior to diversion, the potatoes shall be inspected by an inspector authorized or licensed by the Secretary of Agriculture to inspect and certify the class, quality, and condition of fresh Irish potatoes. The producer shall be responsible for requesting and arranging for inspection so that the inspector can be present to determine the proportion of potatoes in each lot which meet the quality requirements of Specification A. The inspector shall also verify the quantity of potatoes being diverted and that such potatoes have been diverted as defined in § 2880.10. The producer shall furnish such scale tickets, weighing facilities, or volume measurements as determined by the inspector to be necessary for ascertaining the net weight of the potatoes being diverted. The cost of inspecting verifying the quantity, certifying that diversion has been performed, and issuing certificates thereof shall be borne by the producer. Certificates shall be prepared on Form ASCS–118, "Invoice and Certificates of Inspection and Diversion".

§ 2880.13 Methods of utilization.

Following the initial processing as specified in § 2880.10, the potatoes must be fed to livestock or used for starch manufacture by one or more of the following methods:

(a) Feeding in barns or feed lots directly from troughs, bunkers, bins, or other suitable feeding receptacle;

(b) Utilizing the potatoes for starch manufacture.

§ 2880.14 Claim for payment.

In order to obtain payment, the producer must submit to the State ASCS Office which approved his application a properly executed "Invoice and Certificates of Inspection and Diversion", Form ASCS–118, and (except where the producer is the feeder) a certification of receipt by the ultimate feeder or starch manufacturer. All such claims shall be filed not later than one calendar month after the termination date specified in the applicable approved application.

§ 2880.15 Compliance with program provisions.

If USDA determines that any quantity of potatoes diverted under this program

was not used exclusively for livestock feed or starch manufacture purposes, whether such failure was caused directly by the producer or by any other person or persons, the producer shall not be entitled to diversion payments in connection with such potatoes, shall refund to USDA any payment made in connection with such potatoes, and shall be liable to USDA for any other damages incurred as a result of such failure to use the potatoes exclusively for livestock feed or starch manufacture purposes. USDA may deny any producer the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if USDA determines that: (a) The producer has failed to use or caused to be used any quantity of potatoes diverted under this program exclusively for livestock feed or starch manufacture purposes, whether such failure was caused directly by the producer or by any other person or persons, (b) the producer has not acted in good faith in connection with any transaction under this program, or (c) the producer has failed to discharge fully any obligation assumed by him under this program. Persons making any misrepresentation of facts in connection with this program for the purpose of defrauding USDA will be subject to the applicable civil and criminal provisions of the United States Code.

§ 2880.16 Inspection of premises.

The producer, livestock feeder, or starch manufacturer shall permit authorized representatives of USDA at any reasonable time to have access to his premises to inspect and examine such potatoes as are being diverted or stored for diversion, and to inspect and examine the facilities for diverting potatoes in order to determine to what extent there is or has been compliance with the provisions of this program.

§ 2880.17 Records and accounts.

The producer, livestock feeder, or starch manufacturer participating in this program shall keep accurate records and accounts showing the details relative to the diversion and disposition of such potatoes. The producer, livestock feeder, or starch manufacturer shall permit authorized representatives of USDA and the General Accounting Office at any reasonable time to inspect, examine, and make copies of such records and accounts in order to determine to what extent there is or has been compliance with the provisions of this program. Such records and accounts shall be retained for three years after date of last payment to the producer under the program or for two years after date of audit of records by USDA as provided herein, whichever is the later.

§ 2880.18 Set-off.

If the producer is indebted to USDA or to any other agency of the United States, set-off may be made against any amount due the producer hereunder. Setting off shall not deprive the producer of the right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

§ 2880.19 Joint payment or assignment.

The producer may name a joint payee on the claim for payment or may assign, in accordance with the provisions of the Assignment of Claims Act of 1940, Public Law 811, 76th Congress, as amended (31 U.S.C. 203, 41 U.S.C. 15), the proceeds of any claim to a bank, trust company, Federal lending agency, or other recognized financing institution: *Provided,* That such assignment shall be recognized only if and when the assignee thereof files written notice of the assignment with the authorized representative of USDA who approved the application, together with a true copy of the instrument of assignment, in accordance with the instructions on Form CSS–66 or ASCS–66 "Notice of Assignment", which form must be used in giving notice of assignment to USDA. The "Instrument of Assignment" may be executed on Form CSS–347 or the assignee may use his own form of assignment. The CSS forms may be obtained from the State ASCS Office or the Washington office shown in § 2880.1.

§ 2880.20 Officials not to benefit.

No member of or delegate to Congress or Resident Commissioner, shall be entitled to any share or part of any contract resulting from this program or to any benefits that may arise therefrom, but this provision shall not be considered to extend to such a contract if made with a corporation for its general benefit or to any such person acting in his capacity as a farmer.

(Sec. 32, 49 Stat. 774, as amended; (7 U.S.C. 612c))

Dated: May 9, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 80–14823 Filed 5–12–80; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The items in this list were editorially compiled as an aid to **Federal Register** users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing May 8, 1980